



# Company Constitution

Baptist Mutual Limited  
ACN 649 347 384

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## 1. Definitions and Interpretation

### 1.1 Definitions

In this Constitution, unless the contrary intention appears:

**Board** means the board of the directors of the Company;

**BUA** means the Baptist Union of Australia Inc.;

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the Office is located;

**Claim** means damages, expenses, liabilities or losses incurred by a Member who holds a Schedule of Protection and the subject of a claim for discretionary risk protection under Rule 6.13(c);

**Cessation Event** means:

- (a) in respect of a Member of the Company who is an individual;
  - (i) the death of the Member;
  - (ii) the bankruptcy of the Member; or
  - (iii) the Member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) the Member ceases to satisfy any eligibility criteria specified by the Board;
- (c) the Member fails to maintain discretionary protection through the Company in the circumstances described in Rule 10;
- (d) the conduct of the Member, in the opinion of the directors, is unbecoming of the Member or prejudicial to the interests or reputation of the Company; or
- (e) in respect of a Member of the Company who is a body corporate, the dissolution of the Member or the succession by another body corporate to the assets and liabilities of the Member;

**Company** means Baptist Mutual Limited ACN 649 347 384;

**Constitution** means the rules for the operation of the Company set out in this document;

**Contributions** means any contributions calculated and payable in accordance with the guidelines agreed from time to time by the directors;

**Direct Vote** has the meaning given by Rule 16.8;

**Discretionary Risk Activities** means the Company offering discretionary risk protection to the Members;

**Eligible Person** means a person or other entity (including a body corporate or a partnership of trustees or individuals) who is affiliated with the BUA or meets any other eligibility criteria which is determined by the Board from time to time or any other person which is approved by the Board from time to time;

**Financial Services Authorisation Agreement** means an agreement under which the Company is able to provide financial services using the Australian financial services licence of the Foundation Member;

**Foundation Member** means Baptist Insurance Services Limited;

**Law** means the *Corporations Act 2001* (Cth);

**Manager** means a professional mutual manager appointed by the Mutual (if any);

**MCI** means a mutual capital instrument within the meaning given in section 167AD of the Law;

**MCI Holder** means a registered holder of one or more MCIs;

**Member** means any person whose name appears in the Register as a member of the Company;

**National Council** means the National Council of the BUA;

**Notice Address** means the last address for a person as nominated by that person and recorded in the records of the Company, which may include:

- (a) residential or postal address;
- (b) telephone number;
- (c) electronic address;
- (d) social media account address; and or
- (e) other electronic means of notification to that person;

**Office** means the registered office of the Company;

**Place** includes physical venue(s) and, or any online facility(ies) or platform(s) nominated by the Board to allow Members to participate in any meeting or forum of the Company, electronically in real-time or any other format that the Board considers appropriate or otherwise allowable by Law, or any combination of the aforementioned;

**Product Disclosure Statement** means a document titled 'Product Disclosure Statement' describing the benefits, terms and other conditions applicable to a particular type of protection accessible by a Member;

**Protection Year** means the period between 30 September and 4pm (AEST) 30 September 12 months later in each year of membership;

**Protection Schedule** means the schedule issued by or on behalf of the Company to each Member detailing the types of cover accessible by a Member;

**Register** means the register of Members of the Company under the Law;

**Related Body Corporate** of a body corporate is a body corporate which is related to that body corporate within the meaning of the Law;

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Law;

**Rules** mean the provisions of this Constitution and **Rule** means any of them;

**Secretary** means a person appointed under Rule 26 as a secretary of the Company and where appropriate includes any assistant or acting secretary and any other person appointed by the directors to perform, whether alone or in addition to any other person or persons, the duties of secretary of the Company;

**State Office** means the state or territory based incorporated associations representing constituent Baptist churches (and other bodies) that have adopted the associations' constitution.

**Special Resolution** has the meaning given in Section 9 of the Law;

**Subordinate Regulations** means any code of conduct, rules, by-laws, regulations or standards issued from time to time by the Company under Rule 14 and **Subordinate Regulation** means any of them;

**State Office Members** means those Members who are State Offices.

**Voting MCI Holder** means an MCI Holder who is entitled to vote at a general meeting of the Company in accordance with the MCI's terms and conditions of issue.

## 1.2 Interpretation

Unless the context or subject matter otherwise requires, references to:

- (a) Singular words include the plural and vice versa;
- (b) Any gender includes every gender;
- (c) **"Persons"** includes a natural person, corporations, trusts, associations, partnerships, government authorities, and other legal entities, and where necessary, includes successors and assigns;
- (d) Writing includes printing, typing and other means of representing or reproducing words, figures, drawing or symbols in a visible and tangible or electronic communication or form or otherwise, in English;
- (e) Signature and signing means due execution of a document by a person, corporation or other relevant entity and includes signing by an agent or attorney or representative (if a body corporate);
- (f) Where a document (including a notice or consent) is required to be "signed", the requirement may be satisfied in relation to an electronic communication of the document in any manner:
- (g) Permitted by relevant law relating to electronic transmissions (including electronic signature); or
- (h) Approved by the directors (which could include authentication by providing an allocated code or specified personal information);
- (i) **"Present"** or **"attend"** in the context of attendance at meetings, includes whether that be in person, including by the use of technology approved by the directors for the general meeting, or by proxy, attorney or Representative (as applicable);
- (j) **"Months"** mean calendar months;
- (k) **"Statutes"** include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;

- (l) Sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (m) An agreement or document means that agreement or document as amended, novated or supplemented;
- (n) A party includes that party's executors, administrators, substitutes, successors and assigns;
- (o) "Sell" or "sold" include transfer, lease, assign, grant options and/or any other form of disposing of or creating an interest in the thing being considered and buy or purchase will be interpreted accordingly;
- (p) Headings and the table of contents are for convenience only and will be disregarded in the interpretation of this Constitution;
- (q) If a word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning; and
- (r) Each paragraph or sub-paragraph in a list is to be read independently from the others in the list.

### **1.3 Actions authorised under the Law**

Subject to Rule 4, where the Law authorises or permits a company to do anything if authorised by its constitution, the Company is authorised or permitted to do that thing despite any other provision of this Constitution.

### **1.4 Replaceable rules do not apply**

The provisions of the Law that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

### **1.5 Corporation Act prevails**

Subject to Rule 1.3, where any provision in this Constitution is invalid or unenforceable or conflicts with any provision of the Law, it will be read and interpreted as being subject to the provisions of the Law and will be ineffective, but only to the extent of any invalidity, unenforceability or conflict.

### **1.6 No limit on exercise of powers**

Subject to Rule 4, where the Company or the directors or any other person is given a power, right or discretion under this Constitution:

The power, right or discretion may be exercised absolutely without restriction unless the power, right or discretion is expressly limited; and

Any exercise of that power, right or discretion on any occasion will not restrict the further exercise of the power, right or discretion on any other occasion or at any time.

### **1.7 MCI mutual entity**

- (a) The Company is intended to be an MCI mutual entity for the purposes of the Law.
- (b) Subject to this Constitution and the Law, the Board may issue or allot MCIs (including, without limitation, MCIs which are issued upon conversion of another security) to any person on such terms and conditions as the Board may determine from time to time.

- (c) MCIs shall be issued in accordance with, and subject to, the provisions set out in the MCI's terms of issue and this Constitution.

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## **2. Effect of the Constitution**

This Constitution will have effect as a contract:

- (a) Between the Company and each Member;
- (b) Between the Company and each MCI Holder;
- (c) Between the Company and each director and Secretary; and
- (d) Between a Member or MCI Holder and each other Member or MCI Holder,

Under which each Member or MCI Holder agrees to observe and perform the Rules so far as they apply to that Member or MCI Holder.

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## **3. Public Company**

- (a) The Company is registered as a public company limited by guarantee where:
  - (i) The number of Members must not be less than one (1); and
  - (ii) The minimum number of directors that the Company has at any time must be no less than three (3).
- (b) At any time that the Company is operating as a discretionary mutual company, subject to Rule 19.1, the minimum number of directors must be four (4) with a minimum of three (3) out of those four (4) directors appointed by the State Union Members and the Foundation Member and the Directors having the option at any time to appoint a director who is independent, by a Special Resolution of the Board.

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## **4. Objects and Powers**

### **4.1 Objects of the Company**

Without limiting the legal capacity and powers of the Company conferred by law, the Company has the following objects:

- (a) To receive Contributions from Members to provide mutual discretionary and other programs for the protection of Members in respect of Claims;
- (b) In accordance with the Constitution and the guidelines agreed from time to time by the directors to receive, consider and at its sole and absolute discretion pay Claims;
- (c) To pay expenses and outgoings and maintain reserves and such financial provision as the directors consider fit for the Discretionary Risk Activities including in respect of insurance or reinsurance in respect of the protection of Members in respect of Claims;
- (d) To provide such other benefits and services to Members as are in their mutual interest, including but not limited to the establishment and implementation of risk management initiatives and programs;

- (e) To advise on and deal in financial products such as insurance and other forms of risk protection which are beneficial to the Company and the Members; and
- (f) To undertake and pursue all such other similar, related or compatible objects as may from time to time be considered appropriate by the Company.

#### **4.2 Company's powers**

The Company has all of the powers of a natural person and of a body corporate, including those given to it by the Law. These powers include all powers necessary to enable the Company to carry out its objects and without limiting the generality of the foregoing, include (but are not limited to) the power to:

- (a) Accept and undertake full or partial trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration in respect of the trusteeship, administration and management;
- (b) Raise funds and invite and receive Contributions, grants, distributions of income or capital, gifts (by will or otherwise), loans and deposits from any person;
- (c) Purchase, acquire, sell, dispose, receive, transfer, send or otherwise deal with any form of cryptographic token from or to any person;
- (d) Purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purposes of, or capable of being conveniently used in connection with, the Company's objects. However, if the Company takes or holds any property which is subject to a trust, the Company may only deal with that property in the manner allowed by law having regard to that trust;
- (e) Control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in the property;
- (f) Invest, deal with and lend money (and otherwise provide financial accommodation to, and guarantee or otherwise secure loans;
- (g) Construct, improve, maintain and develop, work, manage and control real or personal property and enter into contracts and agreements with any person including without limitation third party providers of goods or services and referral partners or agents;
- (h) Enter into any arrangement with any government or authority that seems conducive to the Company's objects, obtain from any government authority any right, privilege or concession that the Company thinks it desirable to obtain, and carry out, exercise and comply with any of these arrangements, rights, privileges and concessions;
- (i) Engage, dismiss or suspend any employee, agent, contractor, volunteer or professional person;
- (j) Borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, a mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the Company's property (both present and future) and purchase, redeem or pay off those securities;
- (k) Spend money and do all other things that it considers desirable to promote the Company's objects;

- (l) Make, draw, accept, endorse, discount, execute or issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
  - (m) Print and publish newsletters, periodicals, books or leaflets, develop content, develop and own intellectual property including social media and website content and trade marks or otherwise publish, advertise or circulate information in hard copy or by electronic means;
  - (n) Engage in marketing, promotional and recruitment activities with and for current Members and prospects;
  - (o) Accept any gift of property, whether subject to any special trust or not, for the Company's objects;
  - (p) Take any steps by personal or written appeals, public meetings or otherwise, that the Company considers expedient to procure contributions to the Company's funds, by way of donations, gifts (by will or otherwise), grants, sponsorships or otherwise;
  - (q) Appoint patrons of the Company;
  - (r) Decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property; and
  - (s) Do all other things incidental or conducive to attaining the Company's objects.
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## **5. Promotion of Objects**

### **5.1 Benefit the Company**

Subject to Rule 5.2 and Rule 33, the income and property of the Company must be applied solely for the benefit and promotion of the Company's objects and no part of the income or property will be:

- (a) Paid or transferred directly or indirectly by way of dividends, bonus or otherwise to the Members (except where permitted under the terms of issue of an MCI); or
- (b) Paid to directors as fees or other remuneration or other benefit in money or money's worth.

### **5.2 Exception**

Nothing in this Rule 5 precludes:

- (a) Payment of the amounts contemplated under Rule 8;
- (b) Subsidising the cost of protection or arranging additional benefits contemplated under Rule 33;
- (c) Payments of dividends for MCIs contemplated under Rule 11.3;
- (d) Refund of Contributions for any unused Protection Period due to cancellation;
- (e) Payment in good faith or reasonable and proper remuneration to any director, officer or servant of the Company or to any Member in return for any services rendered to the Company provided such payment is permitted under Rule 19.8;
- (f) The payment of interest at the rate not exceeding the rate charged by the Company's bankers on overdrawn accounts on any money lent to the Company by any Member, director or officer;

- (g) In the case of any director who is engaged by the Company as an executive director, consultant or servant, any reasonable and proper remuneration for services provided to the Company;
- (h) The repayment of reasonable out-of-pocket expenses, properly incurred by any director or officer provided such payment is permitted under Rule 19.8;
- (i) The payment of a reasonable rental for premises demised or let by any Member to the Company;
- (j) The indemnification permitted under the Corporations Act or these Rules and any payment of premiums in relation to the protection of directors or officers, or the payment of the proceeds of insurance to, which a director or officer is entitled under the terms of the Company's insurance policy; or
- (k) Any payment in settlement of a Claim.

### **5.3 Directors' prior approval**

Any payment authorised under Rule 5.2 may be made only with the prior written approval of the Board.

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## **6. Membership**

### **6.1 Members**

The Members will be made up of:

- (a) any Eligible Person who applies for and is granted membership of the mutual;
- (b) the Foundation Member; and
- (c) any other persons that the directors admit to membership in accordance with the Rules.

### **6.2 Classes of membership**

- (a) The membership of the Company may be divided into classes of membership at the determination of the directors (and the directors may create new classes of membership for that purpose).
- (b) Where the membership of the Company has been divided into classes, the directors will determine the rights and duties of each class of Members and of the Members of each class.

### **6.3 Rights of Foundation Member**

- (a) The Foundation Member is a member for the purposes of the common objects and purpose of the Company and may participate in the discretionary protection offered by the Company in accordance with the Rules in this Constitution.
- (b) Where the Foundation Member participates in the discretionary protection, the Foundation Member has an entitlement to the payment of any distribution or return of surplus following winding up.
- (c) The Foundation Member also participates as a voting Member for the purposes of having voting rights at a general meeting and voting in relation to representation on the Board.



#### **6.4 Membership of MCI Holder**

For the avoidance of doubt, unless expressly stated otherwise in this Constitution:

- (a) an MCI Holder does not have any entitlement to discretionary risk protection offered by the Company merely by virtue of holding an MCI;
- (b) an MCI Holder may be (or become) a Member of the Company if they satisfy the eligibility criteria set by the Board from time to time; and
- (c) an MCI Holder, who is also a Member, is not deemed to be a Member for the purposes of exercising the rights of an MCI Holder or in respect of any matters involving the MCIs held by that person.

#### **6.5 Application for membership**

Any Eligible Person may apply to be a Member of the Company. The Company may accept applications from other persons with the approval of the directors. In order to be admitted as a Member, every applicant for membership (other than the Foundation Member) must:

- (a) Supply to the Company an application for membership in the form which the directors or their delegates determine; and
- (b) Pay to the Company the membership entrance fee (if any) determined by the Board, by the required time.

#### **6.6 Further information**

An applicant for membership must provide in writing, any other information in addition to that contained in the application, as the Board requires.

#### **6.7 Digital applications for membership**

The Company can require applicants to complete an application for membership electronically or in a digital form.

#### **6.8 Determination of the Board**

- (a) The Board will determine the outcome of each membership application within a reasonable time after receipt.
- (b) Each director may approve or reject any applicant for membership in the directors' absolute discretion.
- (c) Notification of the decision will be made in accordance with Rule 6.10.
- (d) The Board is not required to give or assign any reason or explanation for the approval or rejection of any application for membership. Where rejection of membership is caused by discretionary risk protection being unable to be provided by the Company, the Board will provide suitable reasons pursuant to any law, regulation or Code of Practice (as applicable).
- (e) The Board may in accordance with Rule 14 create by-laws in relation to membership applications and the Board may delegate its power to approve or reject applications and notify the applicant of that decision, to the Secretary, a Board committee or such other person employed or engaged by the Company provided that those decisions are made in accordance with the by-laws.

## **6.9 Entrance fee**

The directors may determine the entrance fee payable by any person applying for membership of the Company. The Board may at any time and as many times as they decide, change the entrance fee payable. Until the directors otherwise determine, no entrance fee is payable.

## **6.10 Notification of determination**

- (a) When an application for membership has been accepted, the Secretary, will send to the applicant written notice of acceptance and will enter the applicant's name and address for notification details, in the Register.
- (b) When an application for membership is rejected, the Secretary, will send to the applicant written notice of the rejection and the entrance fee, if any, paid by that applicant will be refunded in full.
- (c) A person will become a Member on the date that the Board, or its delegate, accepts the Member's application for membership.

## **6.11 Certificates**

- (a) A certificate of membership may be issued by the Company to any Member, in any form deemed appropriate by the Board.
- (b) Any certificate issued will remain the property of the Company and must be returned to the Company on written demand by the Secretary.
- (c) The Company may issue a replacement certificate to a Member if the Company receives and cancels the existing certificate for that person's membership, or the Company is satisfied that the existing certificate is lost or destroyed, and the Member pays any fee as the directors resolve.

## **6.12 Membership not transferable**

Membership of the Company and any interest, benefit or right of any Member is not transferable by operation of law or otherwise. All rights and privileges of membership of the Company will cease immediately upon a Member:

- (a) Ceasing to be a Member for any reason; or
- (b) Purporting to sell or transfer their membership, or agreeing to do so whatsoever.

## **6.13 Member rights and obligations**

- (a) Subject to the class rights of a Member (as determined by the Board in accordance with Rule 6.2) and this Constitution, a Member has the right to receive notices of and to attend and be heard at any general meeting and has the right to vote at any general meeting.
- (b) If a Member is issued with a Schedule of Protection, the Member is entitled to make a Claim on the Company for discretionary protection if an event detailed in the Product Disclosure Statement issued to the Member occurs.
- (c) A Member is entitled to request that the Board consider their Claim for protection and the directors may in their sole and absolute discretion decide whether the Company will pay the Claim. The Board must have consideration to the Product Disclosure Statement and the Schedule of Protection issued to the Member, whether payment of the Claim is in the best interests of all Members when exercising their discretion and

any guidelines adopted by the directors from time to time in accordance with Rule 20.6.

- (d) A Member must ensure that the Contribution for each Protection Year which is payable by them is paid, or take reasonable steps to ensure it is paid on their behalf, by the due date or dates determined (at the discretion of the directors) in each year of membership and that the Member otherwise complies with this Constitution.

#### **6.14 Register of Members**

The following details must be entered in the Register in respect of each Member:

- (a) The full name of the Member and in the case of a body corporate or registered organisation the ABN or other identification of registration of the body or organisation;
- (b) The contact details of the Member, supplied by the Member which may include (as applicable):
  - (i) Residential or postal address;
  - (ii) Telephone number;
  - (iii) Electronic address;
  - (iv) Social media account address; and or
  - (v) Other electronic means for notification nominated by the Member;
- (c) The date of admission to and cessation of membership; and
- (d) Such other information as the directors may from time to time require.

#### **6.15 Member to update their contact details**

Each Member must notify the Secretary in writing, using a facility provided by the Company for notifications or communications, of any change in that Member's Notice Address as soon as possible, but in any event, within one (1) month after the change.

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## **7. Contributions**

### **7.1 Contributions**

Contributions are payable for each Protection Year in accordance with the Product Disclosure Statement and the guidelines established by the directors and the Board will pass a Special Resolution prior to the commencement of each Protection Year to determine the amount of the Contribution payable by each Member or class of Member for the discretionary risk protection provided to them in each Protection Year and the due date for the payment of Contributions.

### **7.2 Unpaid Contributions**

A Member ceases to be entitled to any of the rights or privileges of membership and has no entitlement to be issued with a Protection Schedule for the Protection Year if any Contribution payable for the Protection Year by the Member remains unpaid for up to one (1) month after the due date for payment and a notice of default is given to the Member pursuant to a resolution of the Board. However, the Board may in its absolute discretion extend the time for payment and/or reinstate the rights or privileges of membership (including the issue of a Protection Schedule) upon payment of all arrears if the directors think fit to do so.

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## **8. Levies**

### **8.1 Levies**

In order to provide additional funds required for the operation of the Company, the Board may determine that levies are to be paid by Members and may fix the amount and the dates for payment of them. Unless and until otherwise determined by a Special Resolution of the Board, no levies will be payable by Members.

### **8.2 Different levies payable**

In determining levies under this Rule, the Board may differentiate between classes of Members as to the amounts and timing of levies payable.

### **8.3 Notice**

The Company must give Members at least ten (10) Business Days' notice of levies payable by Members. A notice of levies must be in writing and specify the amount of the fee, and the time and place of payment of the levy. A levy is not invalid if a Member does not receive notice of the levy.

### **8.4 Payment**

A Member must pay to the Company the amount levied on the Member at the times and places specified in the notice of the levy. If a levy is payable in one or more fixed amounts on one or more fixed dates, the Member must pay to the Company those amounts on those dates.

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## **9. Varying or Cancelling Members' Rights**

### **9.1 Varying or Cancelling Member's Rights**

If the membership of the Company is divided into different classes of Members, the rights attached to any class of membership may be varied or cancelled with the written consent of 75% of the Members in that class or with the sanction of a Special Resolution passed at a meeting of the Members of that class. The right to vary membership rights may be exercised unless otherwise provided by the terms of acceptance of the Members of that class and whether or not the Company is being wound up.

### **9.2 Varying or Cancelling MCI Holder rights**

In the case of MCIs, the rights attached to any class of MCI may only be varied or cancelled in accordance with section 167AE of the Law.

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## **10. Cessation of Membership**

### **10.1 Cancellation by member**

- (a) A Member may cancel their membership of the Company by giving written notice to the Company using a facility provided by the Company for notifications or communications or by submitting the notice by email to the Secretary.
- (b) The cancellation of a Member's membership is deemed to take effect from the date of receipt of the notice of cancellation by the Secretary or such later date as is provided in the notice.

## **10.2 Expiration of protection**

If a Member commenced but no longer holds a current Protection Schedule issued by the Company and the discretionary protection was cancelled or expired, or the Company declines to issue or renew their discretionary risk protection, the Member ceases to be a Member on the date advised to the Member by the Company or the date of expiry of the Protection Schedule.

## **10.3 Removal from membership**

- (a) The Board may at its absolute discretion cancel a Member's membership of the Company and remove the person's name from the Register.
- (b) The Board must provide at least fourteen (14) days' written notice to any Member of any intention to cancel the Member's membership of the Company (except for termination under Rule 10.2) and remove the Member's name from the Register so as to enable the Member to provide any written representations to the directors.
- (c) The Board does not have to give reasons for the termination of a Member's membership of the Company and the removal of the Member's name from the Register.

## **10.4 Cessation Events**

A person will cease to be a Member if a Cessation Event occurs in respect of that Member.

## **10.5 Consequences of ceasing to be a Member**

- (a) If a person ceases to be a Member, then they continue to be liable for:
  - (i) All fees and other amounts they owe to the Company which are due and unpaid when they cease to be a Member; and
  - (ii) Amounts which they are, or may become, liable to pay the Company under this Constitution.
- (b) If a person ceases to be a Member, then the Member is not entitled to any refund of Membership or other fees.

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## **11. Issue of MCIs**

### **11.1 Issue of MCIs**

The Company may issue MCIs, including MCIs which are, or at the option of the Company are, liable to be redeemed.

### **11.2 Terms of issue of MCIs**

Each MCI issued by the Company must be issued as a fully paid share and:

- (a) May confer a right to receive dividends as specified in the terms of issue (provided that an MCI must only confer on the holder a right to receive non-cumulative dividends);
- (b) May confer a right on its holder to receive dividends in priority to, equally with, or subordinated to, the payment of any dividend on any other class of MCIs;

- (c) May confer a right on its holder in a winding up and on redemption (if redeemable) to payment in priority to, equally with, or subordinated to, any other class of MCIs as specified in the terms of issue, of:
  - (i) The amount of any dividend accrued but unpaid on the MCI at the date of winding up or the date of redemption (if redeemable); and
  - (ii) Any other amount stated in, or calculated under, the terms of issue limited to the face value of the MCI;
- (d) Does not confer on its holder any right to participate in the surplus assets or property of the Company except as set out in this Constitution;
- (e) May confer a right to a bonus issue or capitalisation of profits in favour of holders of those MCIs only, as specified in the terms of issue;
- (f) May be redeemed on such conditions as specified in the terms of issue (if any); and
- (g) May entitle its holder to vote at, or may prohibit its holder from voting at, any general meeting of the Company, as specified in the terms of issue,

In each case, as determined by the Board under the terms of issue, provided that the rights attaching to MCIs must comply with this Constitution and the Law.

### **11.3 Dividends**

- (a) Subject to the Law, this Constitution and the terms of issue, the Board may determine that a dividend is payable, fix the record date, amount and time for payment and authorise the payment to (or at the direction of) an MCI Holder entitled to that dividend. The Board may rescind or alter any such determination before payment is made.
- (b) The Board must not pay a dividend unless the payment of the dividend can be made from surplus, or profits as determined by the Board in accordance with Rule 33 and where to do so is fair and reasonable to the Company's Members as a whole.
- (c) Unless otherwise determined by the Board, interest is not payable by the Company on a dividend.
- (d) Dividends on MCIs will be paid in the form of cash but may be reinvested in accordance with a dividend reinvestment plan (if any such plan has been approved by the Board).
- (e) A dividend may be paid using any payment method determined by the Board, including by means of direct credit. The payment of any money is at the risk of the holder to whom it is sent.

### **11.4 Additional MCIs**

The Company may at any time create and issue MCIs ranking equally with, or in priority to, or subordinated to, MCIs already on issue or with different rights to MCIs already on issue.

### **11.5 Variation of rights attached to MCIs**

The rights attached to MCIs (or a class of MCIs) may only be varied or cancelled by Special Resolution of the Company and either:

- (a) By passing a Special Resolution at a meeting of MCI Holders holding MCIs (or that class of MCIs in the event of a variation of rights attaching only to a class of MCIs); or

- (b) With the written consent of MCI Holders holding at least 75% of the issued MCIs (or that class of MCIs in the event of a variation of rights attaching only to a class of MCIs).

#### **11.6 Meetings of MCI Holders**

Subject to the Law, the terms of issue of any MCIs and this Constitution, the provisions of this Constitution (being Rules 15, 16, 17 and 18), which deal with general meetings of members of the Company (including relating to the appointment of proxies, attorneys and Representatives, and direct voting) shall apply, so far as they are capable of application and with any necessary changes, to meetings of MCI Holders.

#### **11.7 Voting MCI Holders**

- (a) A Voting MCI Holder is to be deemed a Member of the Company and will be entitled to vote on resolutions at a meeting of the Members of the Company to the extent that is permissible under the terms of issue of the MCIs.
- (b) Unless otherwise provided by Law, a person who is both a Voting MCI Holder and a Member shall only be entitled to exercise one (1) vote in each capacity in which they act and, on each question, arising for determination by either the Members of the Company or the Voting MCI Holders.

#### **11.8 Joint MCI Holders**

The Board may in its discretion register two or more persons as an MCI Holder, and they are taken to hold the MCI as joint tenants with benefits of survivorship subject to the following provisions:

- (a) The Company is not bound to register more than three persons as the holders of an MCI (except in the case of trustees, executors or administrators);
- (b) The joint holders are jointly and severally liable for all payments required to be made in respect of the MCIs;
- (c) Only the person whose name appears first in the register is entitled to receive notices in respect of the MCIs; and
- (d) Any one of the joint holders may vote at a meeting of MCI Holders (either personally or by proxy, attorney or Representative) in respect of the MCIs and, if more than one joint holder is present at any meeting (either personally or by proxy, attorney or Representative), the joint holder who is present and whose name appears first out of those present in the register of MCI Holders is entitled alone to vote in respect of the jointly held MCIs.

#### **11.9 Register**

The Company must maintain a register of MCI Holders and their voting status.

#### **11.10 Certificates**

- (a) An MCI certificate may be issued by the Company to any MCI Holder, in any form deemed appropriate by the Board.
- (b) Any MCI certificate issued will remain the property of the Company and must be returned to the Company on written demand by the Secretary.
- (c) The Company may issue a replacement certificate to an MCI Holder if the Company receives and cancels the existing MCI certificate for that person's MCIs, or the

Company is satisfied that the existing certificate is lost or destroyed, and the MCI Holder pays any fee as the Board resolves.

### **11.11 Variation of MCI Rights**

The rights attached to MCIs may only be varied or cancelled by Special Resolution of the Company and either:

- (a) By passing a Special Resolution at a meeting of MCI Holders holding MCIs; or
- (b) by the written consent of at least 75% of the MCI Holders.

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## **12. Transfer of MCIs**

### **12.1 Form of instrument of transfer**

Subject to this Constitution, and the terms of issue of any MCIs, approved by the Board (by passing a simple majority), an MCI Holder (“**transferor**”) may transfer, all or, any of their MCIs by any method of transfer permitted by the Law to any other person (“**transferee**”). A transfer must do both of the following:

- (a) Show the jurisdiction of incorporation of the Company; and
- (b) Be executed by or on behalf of both the transferor and the transferee.

### **12.2 Execution and delivery of transfer**

If a duly completed instrument of transfer:

- (a) Is used to transfer an MCI in accordance with Rule 12.1; and
- (b) Is left for registration with the Secretary of the Company, accompanied by any information that the Board properly requires to show the right of the transferor to make the transfer (including but not limited to an MCI certificate),

the Company must, subject to this Constitution, the Law and the terms of issue of any MCIs, register the transferee as the holder of the MCI.

### **12.3 Refusal of Registration**

- (a) The Board may refuse to register a transfer of MCIs in the Company if either of the following apply:
  - (iii) The MCIs are not fully paid; or
  - (iv) The Company has a lien on the MCIs, and they are not bound to give their reasons for doing so.
- (b) If the Board refuses to register a transfer of MCIs in the Company, the Board must give written notice of the refusal to the person who lodged the transfer within one (1) month after the date on which the transfer was lodged with the Company.

### **12.4 Effect of registration**

A transferor of an MCI remains the holder of the MCI transferred until the transfer is registered and the name of the transferee is entered in the register of MCI Holders.



## **12.5 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for the period required by Law.

## **12.6 Power to suspend registration of transfers**

The registration of transfers may be suspended at such time and for such period as the Board may determine from time to time, not exceeding thirty (30) days in any calendar year.

## **12.7 Closure of register**

The Board may suspend registration of transfers of MCIs in the Company at the times and for those periods they determine. The periods of suspension must not exceed thirty (30) days in any one (1) calendar year.

## **12.8 Powers of Attorney**

- (a) The Company may assume that a power of attorney authorising an attorney to transfer some or all of an MCI Holder's MCIs that an MCI Holder appears to have granted is a valid and effective grant of power and continues in full force and effect.
- (b) The Company may rely on the power of attorney until it receives a notice that the power of attorney has been revoked or ceases in accordance with the applicable law.

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## **13. Transmission of MCIs**

### **13.1 Transmission of MCIs on death**

If an MCI Holder who is an individual and does not hold MCIs jointly dies, the Company will recognise only the legal personal representative of the MCI Holder as being entitled to the MCI Holder's title or interest in the MCI or any benefits accruing in respect of the MCI, that person may do either of the following:

- (a) Elect to be registered as an MCI Holder in respect of those MCIs by giving evidence of their status as the MCI Holder's legal personal representative and a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those MCIs; or
- (b) Elect to transfer the MCIs to another person in accordance with Rule 12.

### **13.2 Death of joint MCI Holder**

- (a) If an MCI Holder who is an individual holds MCIs jointly with one or more other persons dies, the Company will recognise only the surviving joint registered holders as being entitled to the MCI Holder's title or interest in the MCIs or any benefits accruing in respect of the MCI.
- (b) The estate of the deceased joint holder of an MCI is not released from any liability in respect of the MCIs which has been jointly held by the deceased MCI Holder with other persons.
- (c) Where two (2) or more persons are jointly entitled to any share as a consequence of the death of the registered holder of that MCI, they are taken to be the joint holders of that MCI.

### **13.3 Transmission of MCIs on bankruptcy**

Subject to any provisions of the Law or the *Bankruptcy Act 1966* (Cth), if a person who is entitled to an MCIs because of the bankruptcy of an MCI Holder gives the Board the information it reasonably requires to establish the person's entitlement to be registered as the holder of the MCIs, the person may do either of the following:

- (a) Elect to be registered as an MCI Holder in respect of those MCIs by giving evidence of the person's entitlement to be registered as the holder of the MCIs and a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those MCIs; or
- (b) Elect to transfer the MCIs to another person in accordance with Rule 12.

### **13.4 Transmission of MCIs on mental incapacity**

Subject to any provision of the Law, if a person entitled to MCIs because of the mental incapacity of an MCI Holder gives the Board the information it reasonably requires to establish the person's entitlement to be registered as the holder of the MCIs, that person may do either of the following:

- (a) Elect to be registered as an MCI Holder in respect of those MCIs by giving evidence of the person's entitlement to be registered as the holder of the MCIs and a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those MCIs; or
- (b) Elect to transfer the MCIs to another person in accordance with Rule 12.

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## **14. By-laws, Code of Conduct, etc.**

### **14.1 By-law making power**

The Board may at any time and from time to time issue and/or impose the code of conduct, rules and/or any other by-laws, regulations or standards for the Company which may deal with any matter within the power of the directors including (without limitation):

- (a) The admission and/or disqualification or termination of Members;
- (b) Any Contributions and levies payable by Members;
- (c) Cancellation of protection;
- (d) Conditions of membership;
- (e) Availability of services or facilities of the Company and/or access to them by Members;
- (f) The rights attaching to membership;
- (g) The conditions for the use or licence of any trade or other mark or property of the Company;
- (h) Terms and conditions for MCI offers including type of MCI, class rights and qualifications required for MCI Holders;
- (i) The composition of the Board and representation of member including other representatives to the Board;
- (j) Prerequisites, eligibility criteria or qualifications required for membership; and/or

- (k) Any other operational matters involving the Discretionary Risk Activities or the other business activities of the Company.

## **14.2 Subordinate Regulations**

- (a) The Board may at any time and from time to time without notice:
    - (i) Vary, amend, suspend, revoke or otherwise change any Subordinate Regulation;
    - (ii) Make new Subordinate Regulations,and the Subordinate Regulations for the time being in force will be binding on all Members including MCI Holders (as appropriate).
  - (b) The Board may distinguish between Members, classes of Members or MCI Holders in the application or enforcement of any Subordinate Regulation without giving reasons and without being liable for any loss occasioned by doing so.
  - (c) In the event of any inconsistency or conflict between these Rules and any Subordinate Regulation, these Rules will prevail to the extent of any inconsistency or conflict.
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## **15. General Meetings**

### **15.1 Director may convene**

- (a) A general meeting may be convened by the directors by resolution of the Board.
- (b) The Company must hold an annual general meeting if required by, and in accordance with, the Law.

### **15.2 Directors convening a general meeting at the request of Members**

The directors must call and arrange to hold a general meeting on the request of Members holding at least 5% of the votes that may be cast at a general meeting.

### **15.3 Form of the Members request**

A request from the Members in accordance with Rule 15.2, must in addition to any requirements imposed by the Law:

- (a) State any resolution to be proposed at the meeting;
- (b) Be signed by the Members making the request; and
- (c) Be given to the Company.

### **15.4 Directors refusal to convene**

The directors may refuse to convene a general meeting if the voting on the proposed resolution is not within the power of the Members.

### **15.5 Modification of this Constitution or winding up**

- (a) This Constitution may only be altered by a Special Resolution in accordance with the Law.

- (b) Any alterations under Rule 15.5(a) must be approved by the National Council to be effective.

#### **15.6 Members may convene**

- (a) Members holding, between them, at least 5% of the votes that may be cast at a general meeting, may of their own volition, call and arrange to hold a general meeting.
- (b) The Members calling a meeting in accordance with Rule 15.6(a) must pay the expenses of calling and holding the meeting.

#### **15.7 Notice of general meeting**

- (a) A general meeting may only be convened by giving the Members notice of the meeting.
- (b) Notice shall be given in accordance with Rule 15.8.
- (c) A notice of general meeting does not need to be given to Members who are not entitled to notice of meetings.
- (d) A notice of a general meeting must:
  - (i) Be given (in accordance with Rule 15.8) at least twenty-one (21) days before the date of the meeting unless otherwise agreed by all the Members entitled to notice;
  - (ii) Specify each place, day and time of the meeting;
  - (iii) Describe the nature of the business to be transacted at the meeting; and
  - (iv) Contain any other information required by the Law.
- (e) The directors may postpone a general meeting or change the place for the meeting by giving written notice to all Members who received the original notice of meeting at least forty-eight (48) hours before the appointed time (or such other period as determined by the directors). That notice must specify the time and place for the postponed meeting.
- (f) If a Member does not receive a meeting notice or the directors accidentally omit to give the Member a meeting notice, that omission will not invalidate the proceedings or any resolution passed at the meeting.
- (g) No business is to be transacted at any general meeting except that contained in the meeting notice unless otherwise allowed by the Law.

#### **15.8 How notice may be given**

The Company may give a notice of meeting to a Member:

- (a) Personally;
- (b) By sending it by post to the residential or postal address for the Member noted in the register of Members or the alternative address (if any) nominated by the Member;
- (c) By sending it to the electronic address (if any) nominated by the Member;
- (d) By sending it to the Member by other electronic means (if any) nominated by the Member;

- (e) By notifying the Member in accordance with Rule 15.9; or
- (f) By any other means that the Board resolve as being appropriate from time to time or as otherwise allowable by the Law.

### **15.9 Electronic notification**

- (a) A Member may nominate an electronic means (**nominated notification means**) by which the Member may be notified that notices of meeting are available.
- (b) The Company may from time to time nominate an electronic means (**nominated access means**) by which the Member may nominate to use to access notices of meeting.
- (c) If a Member nominates:
  - (i) Nominated notification means; and
  - (ii) Nominated access means,  
  
the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means):
  - (iii) That the notice of meeting is available; and
  - (iv) How the member may use the nominated access means to access the notice of meeting.

### **15.10 Cancellation of general meetings**

- (a) The directors may cancel a general meeting, other than a general meeting which they are required to convene and hold under the Law.
- (b) Subject to Rule 15.10(c), a meeting may only be cancelled in accordance with Rule 15.10(a) if, notice of the cancellation is given to all persons entitled to receive notice of the meeting, and such notice is given at least two (2) Business Days' prior to the time of the meeting as specified in the notice of meeting.
- (c) A meeting may only be cancelled in accordance with Rule 15.10(a) on less than two (2) Business Days' notice, where all matters of business originally proposed at the meeting have been cancelled, withdrawn or otherwise no longer require consideration at the meeting.

### **15.11 Mode of meeting for Members**

A meeting of Members may be held in two (2) or more places linked together by any technology that gives the Members as a whole in those places a reasonable opportunity to participate in proceedings, enables the chairperson to be aware of proceedings in each place, and enables the Members in each place to vote on a show of hands and on a poll. A Member present at one of those places is taken to be present at the general meeting and entitled to exercise all rights that being present at the general meeting affords.

### **15.12 Admission to general meetings**

If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio visual communication device whatsoever which, by itself or in conjunction with other arrangements:

- (a) Gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and

- (b) Enables the Members in the separate meeting place to vote on a poll,  
a Member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.

### **15.13 Technical difficulties**

If, either before or during the meeting, any technical difficulty causes one or more of the matters set out in Rule 15.11 to not be satisfied:

- (a) The chairperson may:
  - (i) Adjourn the meeting until the difficulty is remedied; or
  - (ii) Continue to hold the meeting and transact business in the place where the chairperson is present (and any other place which is linked under Rule 15.11); and
- (b) No Member may object to the meeting being adjourned, being held or continuing.

### **15.14 Quorum**

- (a) No business may be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, if a quorum of Members:
  - (i) is not present when the meeting proceeds to business; and or
  - (ii) does not remain present throughout the meeting.
- (b) A quorum will be:
  - (i) If the Company has only one (1) Member entitled to receive notice of and vote at the meeting, that Member; or
  - (ii) In every other case, four (4) Members entitled to receive notice of and vote at the meeting, one of whom is the Foundation Member.
- (c) If a quorum is lost and not present at any time during the meeting, business conducted before the absence of a quorum occurs, shall be valid.

### **15.15 Determine a quorum**

In determining whether a quorum is present, a person attending as a proxy, or representing a body corporate that is a Member, is deemed to be a Member.

### **15.16 Procedure where no quorum**

- (a) If the quorum is not present within thirty (30) minutes after the time appointed for the meeting:
  - (i) Where the meeting was convened upon the requisition of Members, the meeting will be dissolved; or
  - (ii) In any other case, the meeting will be adjourned.
- (b) Any adjourned meeting will be rescheduled to be held on a day, time and place that the directors decide.

- (c) If no directors are present at the meeting or if no decision is made by the directors, the meeting will be held on the same day, at the same time and place as originally notified, but in the next week.
- (d) If at the rescheduled meeting the quorum is not present within thirty (30) minutes after the appointed time, then the meeting will be dissolved unless it is adjourned under Rule 15.20.

#### **15.17 Appointment or election of chairperson**

- (a) The chairperson appointed under Rule 19.4 will preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
  - (i) A chairperson of the directors has not been elected;
  - (ii) The chairperson of the directors is not present within 15 minutes after the appointed time; or
  - (iii) The chairperson of the directors is unwilling to act,the Members will elect one (1) Member to be chairperson of the meeting.

#### **15.18 Casting vote**

The chairperson of a general meeting is entitled to a second or casting vote in addition to any vote he or she has as a Member or director.

#### **15.19 Chairperson's powers**

- (a) Subject to the terms of this Constitution dealing with adjournment of meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.
- (b) The chairperson, in his or her discretion, may expel any Member or director from a general meeting if the chairperson reasonably considers that the Member or director's conduct is inappropriate behaviour.

#### **15.20 Adjournment of meeting**

- (a) The chairperson may adjourn any meeting of Members.
- (b) An adjournment of a meeting of Members may be made without the consent of Members.
- (c) Any adjournment may change the time or place for the meeting.
- (d) Only business left unfinished from the meeting adjourned may be transacted at any rescheduled meeting.

#### **15.21 Adjournment of thirty (30) days**

If the meeting is to be adjourned for thirty (30) days or more, notice of the adjourned meeting must be given in accordance with Rule 15.7. The notice must set out the unfinished business of the original meeting. It does not need to set out anything else.

### **15.22 Adjournment of less than thirty (30) days**

A notice of meeting is not required to be given for an adjourned meeting where the adjournment is for less than thirty (30) days.

### **15.23 Rights of third parties to attend general meetings**

Even if they are not Members, in addition to any persons who have a right at Law to attend, the following persons have the right to attend any general meeting and, if requested by the Board, to speak at the general meeting:

- (a) Any director;
- (b) Any Secretary;
- (c) Any MCI Holder (including a Voting MCI Holder) who is entitled to attend general meetings under the terms of issue of their MCIs; and
- (d) Any other person invited by the Board.

### **15.24 Minutes**

The Board must ensure that proper minutes are made of:

- (a) All general meetings of the Company;
- (b) All appointments of officers;
- (c) The proceedings of all general meetings; and
- (d) The attendance at and business transacted at general meetings,

and the minutes of the meeting, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

### **15.25 Class and group meetings**

Any matter to be determined by a class or group of Members must be determined by ordinary resolution (unless otherwise required by the Law) of the class or group at a meeting held, as nearly as the circumstances permit, in the same manner as a general meeting of the Company.

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## **16. Decisions at General Meetings**

### **16.1 Passing of resolutions**

A resolution (unless the Law requires it to be passed by a special majority) on a question arising at a general meeting is decided by a majority of votes cast by the Members entitled to vote on the resolution, present or by proxy, attorney or Representative, on a show of hands or on a poll, as the case may be.

### **16.2 Demand for a poll**

- (a) At any general meeting, a resolution put to the vote of the meeting is decided on a show of hands unless a poll is demanded:



- (i) by the chairperson;
  - (ii) by at least five (5) Members entitled to vote on the resolution; or
  - (iii) by Members with at least 5% of the votes that may be cast on the resolution on a poll (the percentage having been calculated as at the midnight before the poll is demanded).
- (b) A poll may be demanded:
- (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.

### **16.3 Chairperson’s declaration of result conclusive**

If the chairperson declares the result of a vote on a show of hands on a resolution and an entry to that effect is made in the book containing the minutes of the proceedings of the Company, then that is conclusive evidence of the result, unless a poll is demanded in accordance with Rule 16.2 and the demand is not withdrawn. There does not need to be any other proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **16.4 Conduct of poll and other business**

- (a) If a poll is demanded at a general meeting, then the chairperson is to decide the manner and the time and place at which it is to be taken.
- (b) The result of the poll is taken to be the resolution of the meeting at which the poll was demanded.
- (c) After a demand for a poll, the meeting can continue to transact any business other than the question on which a poll has been demanded.

### **16.5 Withdrawal of demand for a poll**

The demand for a poll may be withdrawn.

### **16.6 Validity of votes**

An objection as to the validity of any vote can be made only at the meeting or adjourned meeting or poll at which the vote is tendered. Every vote not disallowed at the meeting or poll is valid. The chairperson’s decision as to whether a vote is allowed is final and conclusive.

### **16.7 Dispute**

The chairperson is to decide any dispute as to the validity, admission or rejection of a vote on a show of hands or on a poll. That determination is final and conclusive.

### **16.8 Discretion to permit direct voting**

The directors may decide that a Member who is entitled to vote on a resolution at a meeting is entitled to a Direct Vote in respect of that resolution. A “**Direct Vote**” includes a vote delivered to the Company by post, electronic means or such other means approved by the directors. The directors may prescribe rules about direct voting – including specifying the form, method and timing of giving a Direct Vote for the vote to be valid. Such voting procedures include but are not limited to email or internet based voting procedures.

## **16.9 Representation at general meeting**

Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:

- (a) In person;
  - (b) By its Representative;
  - (c) By proxy;
  - (d) By attorney;
  - (e) Direct Vote; or
  - (f) By such other means as the Board may determine or the Law may allow.
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## **17. Direct Voting**

### **17.1 One vote per Member**

Each Member only has one vote, regardless of how that vote is cast.

### **17.2 Priority of votes**

If a Member attempts to cast more than one vote on a particular resolution, only the last vote received is to be taken to have been cast, irrespective of the way the vote is cast. That is, if a Member appoints a proxy to vote on their behalf on a particular resolution, however subsequently casts a vote on that same resolution using another method of voting (for example by a Direct Vote), that Member shall be taken to have revoked the authority of the previously authorised proxy to vote on their behalf on that resolution, and unless a subsequent vote is cast by that Member on that resolution, the Direct Vote shall be the vote counted.

### **17.3 Deposit of instrument**

In the case of a Direct Vote, at least forty-eight (48) hours before the time for holding the relevant general meeting or an adjourned meeting, there must be transmitted to an electronic address specified in the notice of meeting, the Member's Direct Vote.

### **17.4 Chairman's decision**

The chairman's decision as to whether a Direct Vote is valid is conclusive.

### **17.5 Attendance by Member who has cast a Direct Vote**

A Member who has cast a Direct Vote is entitled to attend the meeting in person. Any vote cast by the Member in person shall cancel any prior vote on the relevant resolution in accordance with Rule 17.2.

### **17.6 Members not to vote unless fully paid**

A Member is not entitled to vote at a general meeting if all Contributions and levies and any other amounts presently payable by the Member have not been paid by the due date.

### **17.7 Objection to qualification of Member**

Any objection to the qualification of a person to vote must be made at the same meeting at which that person's vote is tendered. Any objection must be referred to the chairperson of the meeting whose decision is final and:

- (a) Any vote approved will be valid for all purposes; or
- (b) Any vote disallowed will be invalid and must be disregarded.

#### **17.8 Only Members entitled to vote may vote**

Only those Members who belong to a class of Members who are entitled to vote at a general meeting will be entitled to vote.

#### **17.9 Rights of third parties to attend general meetings**

Even if they are not Members of the Company, in addition to any persons who have a right at Law to attend, the following persons have the right to attend any general meeting and, if requested by the directors, to speak at the general meeting:

- (a) Any director;
- (b) Any Secretary; and
- (c) Any other person invited by the directors.

#### **17.10 Minutes**

The directors must ensure that proper minutes are made of:

- (a) All general meetings of the Company;
- (b) All appointments of officers;
- (c) The proceedings of all general meetings; and
- (d) The attendance at and business transacted at general meetings,

and the minutes of the meeting, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

#### **17.11 Resolution in writing**

The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

#### **17.12 Form of resolution in writing**

- (a) Separate copies of the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (b) The resolution is passed when the last Member signs.

#### **17.13 Class and group meetings**

Any matter to be determined by a class or group of Members must be determined by ordinary resolution (unless otherwise required by the Law) of the class or group at a meeting held, as nearly as the circumstances permit, in the same manner as a general meeting of the Company.

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## **18. Rules for Voting by Proxy**

### **18.1 Proxies and Representatives**

- (a) Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, or representing a corporation which is a Member has all the powers of a Member, except where expressly stated to the contrary.
- (b) An instrument appointing an attorney or Representative must be in a form as the director may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains the name and address of that Member the name of the company, the name of the proxy or the name of the office of the proxy, and the meeting of Members at which the proxy may be used. The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information.

### **18.2 Appointment of proxies**

- (a) A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy must be a Member.
- (b) A document appointing a proxy must be in writing, in any form permitted by the Law and signed by the Member making the appointment.
- (c) A proxy may be appointed for all or for any number of general meetings, or for a particular general meeting.

### **18.3 Authority of proxies**

A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.

### **18.4 Verification of proxies**

- (a) At least forty-eight (48) hours before the scheduled time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:
  - (i) The document appointing the proxy.
  - (ii) If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
  - (iii) Those documents must be either received at the Office or electronic address specified for that purpose in the notice convening the meeting.
- (b) If a general meeting has been adjourned, an appointment and any authority received by the Company at least forty-eight (48) hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) The Company is permitted to exercise its discretion to accept a proxy in a shorter period of time including any time up to two (2) hours before the scheduled time for holding the meeting or adjourned meeting provided that Members are notified of the proxy timeframes in the notice of meeting or amended notice of meeting.

## 18.5 Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this Constitution.

## 18.6 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (a) The previous death or unsoundness of mind of the principal; or
- (b) The revocation of the instrument or of the authority under which the instrument was executed.

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## 19. Appointments, Removal and Remuneration of Directors

### 19.1 Number of directors

- (a) At any time that the Company is operating as a discretionary mutual company:
  - (i) The number of directors must not be less than four (4);
  - (ii) The maximum number of directors shall be ten (10).
  - (iii) The Company may by ordinary resolution passed at a general meeting of the Members increase the number of directors but must not reduce the minimum number of directors below four (4); and
  - (iv) All of the directors representing the Members must be representatives or nominees appointed by the State Office Members, save and except that one director must be a representative or nominee appointed by the Foundation Member.
  - (v) The first directors of the Company shall be those persons named as directors in the application of incorporation.
- (b) Alternate directors (unless in their acting capacity), are not to be treated as directors for the purpose of determining the minimum or maximum number of directors holding office.

### 19.2 Appointment of directors

- (a) A person, other than any other directors holding office at the date of the adoption of this Constitution, are only to be appointed as a director of the Company in the following manner:
  - (i) The Board will propose suitable candidates (“**Candidates**”) having regard to the number of vacancies on the Board.
  - (ii) Each Candidate must meet the requirements at Law, including but not limited to being a fit and proper person.
  - (iii) Each Candidate must provide a signed consent to act as a director to the Secretary.

- (iv) The names of the Candidates must be submitted to the relevant State Office for approval. The decision of the State Office to approve or reject a Candidate must be provided within 30 days of submission. If no decision is made within this time, the Candidate will be deemed to have been approved.
- (v) The names of each Candidate approved by the relevant State Office will then be submitted to the BUA for approval at the next meeting of the National Council.
- (vi) The BUA may accept or reject a Candidate on such grounds as the National Council alone may determine and the decision of the BUA is final.
- (vii) A Candidate who is approved by the BUA will be appointed as a director of the Company by Ordinary Resolution of the Board and their appointment will be effective from the date of such resolution, provided the appointment is subsequently confirmed by Ordinary Resolution at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a director at the end of the annual general meeting.

### **19.3 Term of directors**

- (a) Each director will be appointed for a three (3) year term and this appointment can be extended to another three (3) year term (and subsequent three (3) year terms), if approved by the Board.
- (b) Directors appointed by the Foundation Member or State Office Members cannot be removed or replaced, except by the Foundation Member or State Office Members or as required by Law.

### **19.4 Appointment and term of chairperson**

- (a) The directors must appoint a chairperson and any replacement chairperson.
- (b) The chairperson appointed under Rule 19.4(a) will act as chair of the Board and Members meetings until the earlier of the chairperson's retirement or resignation or removal by unanimous approval of the other directors.

### **19.5 Retirement of directors**

A director may retire from office by giving notice in writing to the Board advising of the director's intention to retire. A notice of resignation takes effect at the time which is the later of either of the following events:

- (a) The time of giving the notice; and
- (b) The expiration of the period, if any, specified in the notice.

### **19.6 Vacation of office**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Law or another provision of this Constitution, the office of a director becomes vacant if any of the following occurs:

- (a) If the director becomes bankrupt or an insolvent under administration or disqualified or banned from managing a corporation or providing financial services;
- (b) If the director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

- (c) If the director becomes prohibited from being a director by reason of an order made under the Law.

### **19.7 Removal of director**

- (a) The Company may remove any director and appoint another director as a replacement provided that any replacement must satisfy the requirements of Rule 19.2.
- (b) Subject to Rule 19.7(c), the removal or replacement of a director must be effected by ordinary resolution of the Board, unless otherwise provided for by the Law.
- (c) Whether or not the appointment of a managing or executive director was expressed to be for a specified term, the appointment of a managing or executive director terminates if the managing or executive director ceases to be employed by the Company or a Related Body Corporate.

### **19.8 Directors' expenses and remuneration**

- (a) A director's fee may be paid to each of the directors and the amount of that fee will be determined each year by a unanimous resolution of the Board which must also be approved by the BUA.
- (b) Any increase to the director's fee above the annual Consumer Price Index (CPI) increase must be approved by the BUA and the Board.
  - (i) The directors will be entitled to reimbursement of all travelling, accommodation and other expenses properly incurred by them:
  - (ii) In attending and returning from meetings of the directors or any committee of the directors;
  - (iii) In attending and returning from general meetings of the Company; or
  - (iv) In connection with the Company's business.
- (c) A director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond or outside of the director's ordinary duties or is engaged to provide any other service, may be paid a fee for those services, exertions or work provided that those fees are approved by a Special Resolution of the Board.

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## **20. Powers and Duties of Directors**

### **20.1 Directors manage the business**

- (a) Subject to the Law and to these Rules, the Company's business will be managed by the directors.
- (b) The Board may exercise all powers of the Company except where those powers must be exercised by the Company in a general meeting under the Law or these Rules.

### **20.2 All powers of Company**

Without limiting Rule 20.1, the Board may exercise all the powers of the Company to:

- (a) Borrow money;
- (b) Charge any property or business of the Company or all or any of its uncalled capital;

- (c) Issue MCIs in accordance with clause 11;
- (d) Issue debentures; or
- (e) Give any other security for a debt, liability or obligation of the Company or of any other person.

### **20.3 Appointment of attorney**

- (a) The directors may appoint any person or persons under a power of attorney to be the attorney or attorneys of the Company.
- (b) The appointment may be:
  - (i) For any purpose;
  - (ii) In relation to any of the directors' powers, authorities and discretions;
  - (iii) For any period; and
  - (iv) Subject to any conditions as the directors decide.

### **20.4 Provisions of power of attorney**

Any power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the directors decide and may authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

### **20.5 Cheques and promissory notes**

All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed:

- (a) By two (2) directors; or
- (b) In any other manner as the directors decide.

### **20.6 Guidelines**

Notwithstanding Rule 14, the directors must agree and adopt guidelines from time to time in relation to the offer of discretionary protection to the Members and may amend those guidelines from time to time, prescribing:

- (a) The manner and form in which offers of membership of the Company will be made including consideration of applications for admission to membership of the Company;
- (b) The types of discretionary protection to be offered to Members;
- (c) The form of any Product Disclosure Statement, Protection Schedule or other document relating to the offer of protection to the Members;
- (d) The nature of any insurance policies which are to be purchased by the Company and the setting of aggregate and stop loss limits for the mutual and such insurance;
- (e) The nature and extent of the Claims that the Company will consider paying at the discretion of the directors or by a committee or delegate of the directors;
- (f) The basis upon which the payment of Claims will be considered by the directors or by a committee or delegate of the directors;



- (g) The amount of Contributions to be paid to the Company for each Protection Year and the due date for payment of Contributions;
- (h) The obligations of the Company and the Members in respect of Claims;
- (i) The terms on which services will be provided to the Company including for professional mutual management; and
- (j) Such other matters incidental to the activities of the Company as the directors think fit.

## **20.7 Delegation of powers to committee**

- (a) The directors may delegate any of their powers to committees consisting of directors or other persons as they think fit.
- (b) The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the directors.
- (c) In the exercise of any powers delegated to it, a committee formed by the directors must conform to the directions of the directors.

## **21. Proceedings of Directors**

### **21.1 Use of technology**

Any Board meeting may be conducted at more than one (1) place by using any technology that gives each director a reasonable opportunity to participate in the meeting and permits each director present to hear and be heard by each other director present.

### **21.2 Directors' meetings**

- (a) Any director may convene a directors' meeting. The Secretary must convene a meeting at the request of a director.
- (b) Notice of each meeting of the directors must be given to each director at least forty-eight (48) hours before the meeting or at another time determined by resolution of the directors. Despite this requirement, all directors may waive in writing the required period of notice for a particular meeting and it is not necessary to give a notice of a meeting of directors to a director who has been given a leave of absence.
- (c) The notice may be given by telephone or other electronic means of communication. The notice must specify:
  - (i) The date and time for the proposed meeting;
  - (ii) The place for the meeting;
  - (iii) If the meeting is to be conducted using technology, the method for conducting the meeting; and
  - (iv) The nature of the business to be transacted at the meeting.

### **21.3 Quorum**

- (a) Prior to the Company operating as a discretionary mutual company, at a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is two (2) directors entitled to vote on any motion that may be moved by the meeting.

- (b) Once the Company commences operating as a discretionary mutual company and Rules 3(b) and 19.1(a) are applicable, at a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is three (3) directors, with a minimum of two (2) of those directors being independent, non-executive directors, entitled to vote on any motion that may be moved by the meeting.
- (c) The quorum of directors must be present throughout each directors' meeting. If a quorum is lost and not present at any time, any business conducted before the absence of a quorum occurs shall be valid.

#### **21.4 Directors to continue to act**

Where a vacancy in the office of a director occurs, the remaining directors may continue to act. If the number of remaining directors is insufficient to constitute a quorum, the directors may act only for the purpose of increasing the number of directors to that required to constitute a quorum or to convene a general meeting.

#### **21.5 Chairperson not present**

Where a directors' meeting is held and the chairperson:

- (a) Has not been appointed; or
- (b) Is not present within fifteen (15) minutes after the appointed time; or
- (c) Is unwilling to act,

then the directors present must elect one (1) amongst them to be chairperson of the meeting, but the meeting can only proceed if the quorum requirements in Rule 21.3 are satisfied.

#### **21.6 Voting**

At meetings of directors, each director entitled to vote has one (1) vote.

#### **21.7 Casting votes**

The chairperson does have a casting vote at any meeting of directors, in addition to any vote the chairperson has as a director.

#### **21.8 Circular resolution**

The Board may pass a resolution without a directors' meeting if all of the directors entitled to vote on the resolution sign a document stating that they are in favour of the resolution. Duplicate copies of the document may be used for signing. The resolution is deemed to be passed when the last director signs.

#### **21.9 Validity of directors' acts**

All things done by any directors' meeting or by a committee of directors or by any person acting as a director will be valid even though it subsequently becomes known that:

- (a) There was some defect in the appointment of a person to be a director or a member of the committee, or to act as a director; or
- (b) A person appointed was disqualified.

#### **21.10 Reserved Matters and decisions of the Board**

- (a) Except where a Special Resolution is required under this Constitution or the Law, or where a decision is required to be made unanimously by the directors under Rule

21.10(b) (or otherwise under this Constitution), questions arising at a meeting of the Board must be decided by an ordinary resolution of directors present and voting and an ordinary resolution is for all purposes a decision of the Board.

- (b) The following decisions, matters and actions must be decided by the Board passing a Special Resolution (and except where the Law requires such matters to be approved by a meeting of the Members, the Members will not be entitled to vote on those matters):
- (i) To authorise any borrowings or financial accommodation or increasing existing borrowings or financial accommodation (in whatever form) of an amount in excess of \$50,000 per annum;
  - (ii) To issue or redeem MCIs;
  - (iii) To incur expenditure or liability exceeding \$50,000 per annum on its capital accounts in any financial year for an individual transaction or a series of transactions in aggregate;
  - (iv) To enter into any transaction that is not proposed on a commercial “arm’s length basis” or of any unusual or onerous nature or that is outside the ordinary course of the Discretionary Risk Activities;
  - (v) To request financial assistance to finance the operations of the Company whether by way of capital contribution and/or loan;
  - (vi) To sell, dispose or assign any part of the Company’s business assets;
  - (vii) To implement any proposal to cease to carry on the Discretionary Risk Activities or a substantial part of the Discretionary Risk Activities;
  - (viii) To merge all or any substantial part of the assets of the Company with any other entity’s business;
  - (ix) Except to the extent permitted in the Financial Services Authorisation Agreement or any other agreement between the parties, to enter into any agreement or arrangement in connection with the Discretionary Risk Activities with one of its associates;
  - (x) To give guarantees or indemnities for or on behalf of the Company;
  - (xi) To make any material change to the accounting policies for the Company (other than as required to comply with applicable accounting standards);
  - (xii) To transfer, sell or surrender any asset of the Company or the whole or any part of any material undertaking of the Company;
  - (xiii) To purchase the freehold in any property or determine the terms and conditions on which the Company will at any time and from time to time lease, sub-let or purchase premises for the Company or for the operation of the Discretionary Risk Activities;
  - (xiv) To appoint or remove the actuary, accountant or auditors for the Company provided that ASIC consent is obtained by the auditor prior to their removal (as required by Law);
  - (xv) To incorporate a company or otherwise establish any other legal entity to carry on the Discretionary Risk Activities or provide services or resources;

- (xvi) To commence a new business for the Company;
  - (xvii) To commence, defend or settle any legal or arbitration proceedings other than routine debt collection;
  - (xviii) To invest the Contributions other than in accordance with a delegated investment mandate given by the unanimous resolution of the directors and always in accordance with Law;
  - (xix) To exercise discretion to pay Claims other than in accordance with a delegated claims handling authority given by the unanimous resolution of the directors;
  - (xx) To create, grant or release any mortgage, charge, or undertaking or other security or encumbrance over assets of the Company;
  - (xxi) To dispose of or grant any option or right of pre-emption in respect of assets of the Company;
  - (xxii) To acquire any insurances or allow any current insurances to lapse on behalf of the Company;
  - (xxiii) To make any material alteration in the nature and/or direction of the Company or the Discretionary Risk Activities or the nature or scope of the Discretionary Risk Activities;
  - (xxiv) To approve the annual limits of expenditure, capital investments, contract values and other budget and financial management policies for the Mutual;
  - (xxv) To approve the payment of any surplus under Rule 33;
  - (xxvi) To dissolve or wind up the Company;
  - (xxvii) To acquire any personal property for the Company with a value in excess of \$50,000; and
  - (xxviii) To execute any contract or enter into any commitment with a value of \$50,000 or more for each financial year.
- (c) The directors may by Special Resolution change or modify the matters, decisions and actions that require unanimous approval of the directors under Rule 21.10(b).
- (d) Certain matters which are to be considered by the directors will be reserved matters and this means they require the approval of the Manager acting through its appointed directors in order for a resolution to be passed.

## 21.11 Minutes

The directors will cause proper minutes to be made of:

- (a) All directors' meetings;
- (b) All appointments of offices;
- (c) The proceedings of all directors' meetings and committees of directors; and
- (d) The attendance at all meetings of the directors and the business transacted at those meetings,

and any minutes purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

#### **21.12 Resolution in writing**

A resolution in writing signed by all directors, excluding directors who have been given a leave of absence, is to be treated as a determination of the directors passed at a meeting of the directors duly convened and held.

If a resolution in writing is signed by an alternate director, it must not also be signed by the appointor of the alternate director and vice versa.

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## **22. Alternate Directors**

### **22.1 Appointment of an alternate**

A director may appoint any person to be an alternate director during any period as a director requires, but only:

- (a) With the approval of the other directors acting reasonably; and
- (b) While the appointor is not available to act.

### **22.2 Notice of meetings**

An alternate director is entitled to receive notice of and to vote at directors' meetings unless the appointor is present at the meeting.

### **22.3 Power of alternate**

An alternate director may exercise any of the appointor's powers during any period that the appointor is unavailable to do so. The exercise of any power by the alternate director is deemed to be the exercise of that power by the appointor.

### **22.4 Termination of appointment**

The appointment of an alternate director will terminate:

- (a) On written notice by the appointor even though the appointment period has not expired;
- (b) Automatically if the appointor ceases to be a director.

### **22.5 Responsibility**

An alternate director will, whilst acting as a director, be responsible to the Company for his or her own acts and defaults and will not be deemed to be the agent of the director by whom he was appointed.

### **22.6 No remuneration**

An alternate director will not be entitled in that capacity to receive any remuneration from the Company.

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## **23. Personal Interests of Directors**

### **23.1 Director's duty to notify**

- (a) A director who has a material personal interest in a matter relating to the affairs of the Company must give the other directors notice of the interest as the Law requires.
- (b) A contravention of Rule 23.1(a) by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

### **23.2 Restriction on voting**

- (a) A director who has, directly or indirectly, a material personal interest in any matter that is being considered at a directors' meeting must not (except as allowed under Rule 23.2(b) or otherwise by the Law):
  - (i) Be present while the matter is being considered at the meeting;
  - (ii) Be counted in the quorum for the purposes of considering the matter; or
  - (iii) Vote on the matter.
- (b) Rule 23.2(a) does not apply in the situations allowed under section 195(2) of the Law which, as at the date of this Constitution, means that Rule 23.2(a) does not apply if directors who do not have a material personal interest in the matter have passed a resolution that:
  - (i) Identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Company; and
  - (ii) States that those directors are satisfied that the interest should not disqualify the director from voting, being present or being counted in the quorum.
- (c) If section 195(2) of the Law is modified, replaced or substituted, then this Rule 23.2 is read as amended so that it is consistent with the modified, replaced or substituted section.
- (d) A contravention of Rule 23.2(a) by a director does not affect the validity of any resolution.

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## **24. Execution of Documents**

### **24.1 Execution with or without the common seal**

The Company may execute a document with or without affixing a common seal. The Company executes a document if the document is executed in accordance with the Law.

### **24.2 Execution of deeds**

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this Rule 24.

### **24.3 No limitation**

This Rule will not be interpreted as limiting the manner in which the Company may execute a document (including a deed).

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## **25. Committee**

### **25.1 Delegation to committee**

The directors may delegate any of their powers to committees consisting of directors or other persons as they decide.

### **25.2 Powers of committee**

A committee to which any powers have been delegated, must exercise the powers delegated in accordance with any directions of the directors and in accordance with this Constitution. A power exercised in accordance with those directions is deemed to have been exercised by the directors.

### **25.3 Proceedings of committees**

Except as provided in a direction of the directors, the meetings and proceedings of a committee formed by the directors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the directors.

### **25.4 Election of chairperson**

Where a committee meeting is held and:

- (a) A chairperson has not been elected; or
- (b) The chairperson is not present within fifteen (15) minutes after the appointed time; or
- (c) The chairperson is unwilling to act,

the committee members present may elect one (1) of their number to be chairperson of the meeting.

### **25.5 Decision by Ordinary Resolution**

Questions arising at a committee meeting will be determined by an ordinary resolution of the committee members who are present and voting and each committee member present and entitled to vote shall have one (1) vote.

### **25.6 Casting votes**

The chairperson does have a casting vote, in addition to any vote he or she has as a committee member.

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## **26. Secretary**

The Secretary will be appointed by the directors on terms and conditions determined by the directors. The directors may appoint a person as an additional Secretary or as acting Secretary or as a temporary substitute for the Secretary who will, for the purposes of these Rules, be deemed to be the Secretary. The directors may at any time remove or replace the Secretary.

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## **27. Accounts and Audit**

### **27.1 Proper records kept**

The directors must ensure that proper accounting and other records are kept. A balance sheet and profit and loss account must be prepared and distributed to all Members and MCI Holders at least once each year.

### **27.2 Auditor**

The Company must appoint an auditor or auditors, whose duties and appointment and removal will be regulated in accordance with the Law.

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## **28. Reserves**

### **28.1 Make reserve**

The directors may:

- (a) Write off from the Company's earnings any amount for loss or depreciation of any property; and/or
- (b) Set aside any amount out of their Company's profits,

as a reserve fund to meet contingencies or for repairing, improving and/or maintaining any of the Company's property and/or for any other purposes which are conducive to the interests of the Company.

### **28.2 Deal with reserve**

The directors may:

- (a) Invest, lend or dispose of any reserved amounts in any way;
  - (b) Deal with, vary and dispose of any investments or parts of them for the benefit of the Company;
  - (c) Divide the reserve fund into special funds; and/or
  - (d) Employ the assets constituting the reserve fund in the business of the Company and without being bound to keep the same separate from other assets.
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## **29. Inspection of Records**

### **29.1 Conditions**

The directors may determine whether and under what conditions the accounting records or other documents of the Company will be open to the inspection of Members or MCI Holders.

### **29.2 No right unless authorised**

A Member or MCI Holder does not have the right to inspect any document of the Company except as provided by the Law or authorised by the directors or by the Company in general meeting.



### 29.3 Directors' right

The directors have the right at any time to inspect the accounting records or other documents of the Company, whether or not they are a Member.

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## 30. Notices

### 30.1 Form of notice

Any notice or other communication in connection with this Constitution must be in writing and signed by the person giving the notice and be addressed to the Notice Address of the person to whom it is to be given.

### 30.2 Time of delivery

The notice or other communication will be deemed to be received unless otherwise stipulated by the Law:

- (a) In the case of a posted letter, on the third day after posting;
- (b) In the case of delivery by generally recognised overnight courier, on the second day after dispatch with that courier;
- (c) In the case of personal delivery, on the date of delivery; or
- (d) In the case of transmissions by electronic mail, on the day of transmission if the electronic medium sending the notice states that the transmission was completed before 5:00pm on a business day, otherwise on the next business day. This method of service is effective only if the medium's report states that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

### 30.3 Electronic means

- (a) A director, MCI Holder or a Member may nominate an electronic means ("**nominated notification means**") by which the director, MCI Holder or the Member (as the case may be) may be notified that any notices, including notices of meeting, are available.
- (b) The Company may from time to time elect an electronic means ("**nominated access means**") by which the director, MCI Holder or the Member (as the case may be) may nominate to use to access any notices, including notices of meeting.
- (c) If a director, MCI Holder or Member nominates:
  - (i) A nominated notification means; and
  - (ii) A nominated access means,
- (d) the Company may give the person any notices, including notices of meeting, by notifying the person (using the nominated notification means):
  - (i) That the notice is available; and
  - (ii) How the director, MCI Holder or Member may use the nominated access means to access the notice.
- (e) The director, MCI Holder or the Member can provide any notice to the Company by using a facility provided by the Company for notifications or communications.

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## **31. Indemnity and Insurance**

### **31.1 Indemnity against liability**

To the extent permitted by the Law, the Company may indemnify every person who is, or who has been, a director or officer of the Company or any Related Body Corporate against:

- (a) Any liability incurred by them in their capacity as a director or officer, to a person other than the Company or Related Body Corporate, except where the liability relates to a wilful breach of duty or a contravention of Sections 181 to 184 of the Law;
- (b) Any liability for legal costs or expenses incurred by them in defending any proceedings in which judgment is given in their favour; or
- (c) Any liability for legal costs or expenses incurred by them in defending any proceedings in which they are acquitted or the Court grants relief in their favour.

### **31.2 Insurance**

To the extent permitted by the Law, the Company may insure or pay any premiums on a policy of insurance for a director or officer of the Company or of a Related Body Corporate against any liability for which the Company indemnifies the director or officer under Rule 31.1.

### **31.3 Resolution to Grant Indemnity**

A director may vote in favour of the resolution that the Company grant an indemnity pursuant to Rule 31.1, take insurance or pay the premiums on an insurance policy even though the director has a direct and material interest in the outcome of the resolution.

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## **32. Winding Up**

### **32.1 Contributions to cover debts etc.**

In the event of the winding up of the Company, every Member of the Company undertakes to contribute to the property of the Company, the amount which is agreed to be paid by each Member to be applied:

- (a) To payment of the debts and liabilities of the Company before ceasing to be a Member;
- (b) To fund the Claims approved for payment by the directors;
- (c) To the costs, charges and expenses of winding up; and
- (d) For the adjustment of the rights of the contributors among themselves.

### **32.2 Liability of Members**

- (a) The liability of each Member under Rule 32.1, will terminate on the day which their membership of the Company ceases.
- (b) Until otherwise determined, the amount to be contributed by each Member under Rule 32.1 will be \$1.

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## **33. Surplus Funds**

### **33.1 Dealing with surplus funds**

Subject to the Law, if upon winding up or dissolution of the Company or prior to closing any Protection Year, the Board reasonably considers that:

- (a) The Contributions and other receipts (including transfers from reserves and provisions) in respect of the previous Protection Year; and
- (b) All transfers to reserves and provisions made out of the Contributions paid for Claims to be determined by the directors in respect of such Protection Year including reasonable provision for likely Claims to be made by the Members,

will or is likely to exceed the claims, expenses, losses and other outgoings (whether incurred, accrued, contingent or anticipated) falling upon the Company for that year, then the excess may at the discretion of the directors be disposed of in whole or in part as follows:

- (c) To establish any additional Claims reserves which in the reasonable opinion of the directors are appropriate for the Company;
- (d) To fund the operations of a non-for-profit association or company which is operated for the benefit of the Members collectively with objects which are similar to the objects of the Company or to provide benefits which are similar to one or more of the benefits provided by the Company; or
- (e) Any other distribution which is permitted by law and consistent with the principles of mutuality.

### **33.2 Surplus following closure of Protection Year**

Except in the case of winding up or dissolution of the Company, a disposal under Rule 33.1 may be made by way of:

- (a) Subsidising the cost of protection for a Member or a group of Members in a future Protection Year;
- (b) Arranging additional benefits for Members in accordance with the objects of the Company; or
- (c) Arranging a distribution to Members which is permitted by law and consistent with the principles of mutuality.

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## **34. General**

### **34.1 Submission to jurisdiction**

Each Member and each MCI Holder submits to the non-exclusive jurisdiction of the Supreme Court of Victoria, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

### **34.2 Prohibition and enforceability**

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.